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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/604,525
Filing Date: June 27, 2000
Appellant(s): PORTILLO ET AL.

MAILED

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GROUP 3600

John R. Harris
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 9/7/2007 appealing
from the Office action mailed 2/3/2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,141,653 Conklin et al. 10-2000

"eBay Teams With Parcel Plus, Tradesafe and I-Escrow to Provide Seamless Shopping and Shipping For the Holidays; Shipping and Escrow Services Now Just a Mouse Click Away on eBay." Business Wire, Nov 24, 1997. p11240269.

Godwin, Nadine. "The Changeover to Computers Puts Shiplines
In New Waters" Travel Weekly, v44, (Dec. 23, 1985), p. 19.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 16,18-26, 28-39, 41-42, 44-52, 54-65, 67-68, 70-76, 78-89, 91-92, 94-100, 102-113, 115-116, 118-123, 125-136, and 138, 140-158 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conklin (US 6,141,653), in view of Business Wire article (09889724 from Dialog file 148).

Conklin discloses an online commerce system including a buyer and seller (Abstract, Summary, Figs. 1), providing a money transfer system connected with at least the seller computer (Figs. 2b, 2c, 3 (Community of Commerce), Fig. 7, figs. 11a-1 through 11a-3, fig. 12 (payment), Fig. 30 (request for a wire-transfer), the money transfer system connected for electronic commerce communications with one or more payment locations associated with the money transfer system having payment location local computers (col. 31, lines 9-36; col. 26, line 43-col. 27 line 32, Figs. 1, 27, 30), effecting a payment from a buyer to a seller (Fig. 2c; wire transfers, col. lines 51-65; col. 25, lines 55-59; col. 27, lines 14-25), receiving at the money transfer system an electronic payment request from the seller computer in response to a proposed transaction (e.g., col. 26, lines 1-56, Fig. 9) between the buyer and the seller (col. 31, lines 11-25), seller has a web site, col. 28, lines 9-36; col. 27, lines 5-31), the payment request comprising information including at least a transaction amount (col. 31, lines 10-34), determining by the money transfer system a preliminary total amount required from the buyer in connection with the transaction comprising at least the transaction amount (-see

fig. 1g ("prices" 50; "catalog prices" (in Propose Orders box); "Order activity").

determining by the money transfer system a grand total amount based upon the preliminary total amount any other applicable charges (taking into account any discounts, col.25, lines 41-59; col. 31, lines 40-54; Fig. 16("Total"); Fig. 30 "Details of Charges" 71 A .

communicating information from the money transfer system to the seller computer system for displaying at least the grand total amount and the unique transaction number to the buyer computer system (col. 31, lines 41-45; col. 32, lines 1-16; the seller has a computer and is negotiating online with the buyer, the seller also knows whether there will be a discount and what the shipping and handling charges are therefore the seller would see the total amount on their computer display and know what amount the buyer will be responsible for whether using cash to get a wire transfer or using a form of cash as in electronic cash, cols. 26-32; also the seller is notified by email, col. 25, line 60-col. 26, line 19, especially col. 25, line 64-col. 26, line Fig. 16; 535, Fig. 7), in response to receipt at the money transfer system of information from a payment location that payment in the amount

of the grand total amount has been received at the payment location (Figs. 7, 8, 12,16) and ("the present invention enables the use of internationally accepted payment methods and automates the negotiation of them, along with the negotiation of the overall agreement. The payment vehicle most commonly used when the buyer and the seller are complete strangers to each other is the letter of credit(L/C). In a proposed letter of credit, such as that shown in FIG. 16, the buyer's bank assumes the full credit risk, and is absolutely obligated to pay the seller... The present invention enables, as part of the negotiations process, the negotiation of the terms of a letter of credit as seen in FIG. 16. The letter of credit shown there, if accepted by the deciding entity DE as part of the negotiations, can be transmitted over a SWIFT compatible network to the advising bank, for immediate implementation. Thus, if the participants are unwilling to pay using credit cards or CYBERCASH.TM. payment methods, (which are essentially cash payments in advance) a seller can still activate a Website automatically and take volume orders if it is willing to negotiate letters of credit, wire transfers, documentary collection procedures or to accept a buyer's purchase order... Documentary collection payment methods, purchase order payment

methods, procurement cards and similar methods can also be used and negotiated using the present invention.")-see col. 26, line 65-col 27, line 30.

communicating a message to the seller computer system that payment has been actually made at a payment location (Figs. 7-8, 16); and

effecting completion of the transaction by making payment via the money transfer system to the seller (col. 17, lines 39-56; 575, 580, 585, 590, Fig.8, col. 26, line 65- col. 27, line 30), as specified in claims 16, 42, 68, 92, 116, 138.

wherein the payment location local computer is a stand alone computing system with money transfer capabilities (buyer can user cards, or electronic cash from their computer, col. 27, lines 14-31; or computer can be at the bank where a wire transfer takes place), as specified in claims 18, 44, 70, 94, 118, 140;

wherein payment to the seller comprises the grand total amount expressed in the local currency (usd, Fig. 11a-1) of the seller, less any applicable transaction fees (shipping fees, Fig. 7; discounts, col. 25, lines 41-59; commissions, Fig. 11a-2, 11a-3), as specified in claims 19, 45, 71, 95, 119, 141; determining a buyer local exchange rate (Fig. 30) for the

preliminary total amount based upon buyer information (Fig. 13; col. 25, lines 43-59; currency conversion, col. 6, lines 51-65) provided from the buyer computer system to the seller computer system, and thence to the money transfer system (sponsor or Internet), as specified in claims 20, 46

wherein the buyer information comprises buyer address information including a country (Fig. 20; Figs. 13, 27; using international payments, col. 25, lines 55-59; col. 26, lines 59-65; Figs. 5b, 15-16), as specified in claims 21; 47, 72, 96, 120, 142;

determining the grand total amount (Fig.7) expressed in the local currency of the buyer (Fig. 30) based on the determined buyer local exchange rate (usd, Fig. 11a-1, Fig. 13; col. 25, lines 43-59; currency conversion, col. 6, lines 51-65), as specified in claims 22, 48;

wherein the seller computer displays a plurality of selectable payment methods for selection by the buyer in connection with transaction (530, Fig. 7; col. 27, line 65-col. 28, line 9), the payment method including a cash payment method (e.g., col. 27, lines 14-25; or Fig. 2), and wherein the payment request is generated by the seller computer system in response to selection by the buyer of the cash payment method, as

specified in claims 23, 49, 73, 97, 121, 143;

wherein the payment request information includes information selected from the group comprising: buyer identification information, seller identification information, seller order number, transaction date, a summary of items purchased, purchase price, shipping charges, and total price (Figs. 13, 27; col.25, lines 41-59; col. 26, lines 59-65; Figs. 5b, 15-16), as specified in claims 24, 50, 74, 98, 122, 144;

wherein the preliminary total amount comprises the sum of the transaction amount, shipping charges and any applicable transaction fees (col. 31, lines 40-54; 525, Fig. 7), as specified in claims 25, 51, 75, 99, 123, 145;

generating a unique data record corresponding to the payment request and storing the data record in a staging area associated with the money transfer system (unique IDs for transactions, col. 21, lines 39-45; ; Figs. 15-23, especially Figs. 15a, 16, 30; purchase order numbers, Fig. 11a-1, 12; 570, Fig. 8; col. 20, lines 1-5; lines 57-63), as specified in claims 26, 52, 76, 100, 116, 146;

determining a seller local exchange rate for the funds due to the seller based upon seller information provided by the seller computer, and determining a grand total amount expressed

in the local currency of the seller, based upon the grand total amount and the determined seller local exchange rate, less any applicable charges (usd, Figs. 11, Fig. 13; col. 25, lines 43-59; currency conversion, col. 6, lines 51-65), as specified in claims 28, 54, 78, 92, 102, 125, 116, 147;

determining whether an amount associated with the transaction exceeds a predefined compliance limit (threshold of authorization, col. 15, lines 18-25; col. 20, lines 1-4), and requesting additional information from the buyer in response to a determination that said amount exceeds the predefined compliance limit (also reads on the negotiating process where the buyer is being outbid, col. 19, lines 58-67; cols. 20, 25-26, 30-31), as specified in claims 29, 55, 79, 103, 126, 148;

in response to information from a payment location local computer that payment in the amount of the grand total amount has been received at the payment location, communicating a Money Transfer Control Number (MTCN) to the payment location for provision to the buyer ("buyer will be notified, Fig. 16; or see Figs. 15a, 17, 20-21), as specified in claims 30, 56, 80, 104, 127, 149;

providing a receipt to the buyer at the payment location, the receipt bearing at least the MTCN ("buyer will be notified,

Fig. 16; or see Figs. 15a, 17, 20-21), as specified in claims 31, 57, 81, 105, 128, 150;

wherein the payment made by the buyer at the payment location is by cash, credit card, or check (530, Fig. col. 27, line 65-col. 28, line 9 or col. 27, lines 14-25 or Fig. 2), as specified in claims 32, 58, 82, 106, 129, 151;

wherein the information provided step of communicating information to the seller computer system for displaying to the buyer computer system includes instructions to the buyer that payment in the grand total amount should be tendered to a payment location (Figs. 15 C-1, 15 C-2; "buyer will be notified, Fig. 16; Figs. 17, 19, 21 and respective disclosure), as specified in claims 33, 59, 83, 107, 130, 152;

wherein the information provided in the step of communicating information to the seller computer system for displaying to the buyer computer system includes information as to a plurality of payment locations at which actual payment may be tendered (plurality of sponsors or banks for wire transfer or see 530, Fig. 7; col. 27, line 65-col. 28, line 9; or col. 27, lines 14-25; or Fig. 2), as specified in claims 34, 60, 84, 108, 131, 153;

wherein a payment gateway is positioned to communicate

information between the seller computer and the money transfer system (e.g., sponsor, Fig. 4a; bank, col. 27, lines 14-31), as specified in claims 35, 61, 85, 109, 132, 154;

canceling the transaction if the buyer does not make payment at a payment location within a predetermined time period (not responding to a negotiation would lead to canceling an order, col. 25, line 60-col. 26, line 197 expiration date, Fig. 16), as specified in claims 36, 62, 86, 110, 133, 155;

wherein the payment request includes an order number provided by the seller computer (unique IDs for transactions, col. 21, lines 39-45; Figs. 15-16; purchase order numbers, Fig. 11a-1, 12), as specified in claims 37, 63, 87, 111, 134, 156;

wherein the seller is a merchant and operates an Internet-accessible web site for conducting transactions with buyer computers (04, Figs. 1; col. 17, lines 13-35; col. 18, lines 38-46; col. 28, lines 9-36), as specified in claims 38, 64, 88, 112, 135, 157;

accessing information stored at the money transfer system including the grand total amount due from the buyer, response to receipt of a message from a payment location including the unique confirmation number, and communicating the grand total

amount to the payment location accessing data, (e.g., 570, Fig. 8; col. 20, lines 1-5; lines 57-63), as specified in claims 41, 67, 91, 115.

In Conklin, when a seller accepts a purchase order (Figs. 18, 21) the seller is essentially requesting a "necessary payment" (Fig. 18) and generates a unique transaction number (numbers associated with wire transfer, Fig. 30; or purchase order numbers, Figs. 18, or 21). However, Conklin does not explicitly disclose assigning by the money transfer system a unique transaction number to the payment request, as specified in claims 16, 42, 68, 92, 116, and 138. The Business Wire article however, teaches ("The seller initiates contact with I-ESCROW, then fills out a simple order form. I-ESCROW assigns a transaction identification number and a seller password after the seller submits the completed form...the buyer verifies the purchase...and instructs I-Escrow to release the funds to the seller.")-see p. 2, para. 3. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Conklin to include assigning a transaction identification number as was shown by the Business Wire article in order to provide the escrow service and the

seller with a method of tracing the payment activity of a transaction.

Conklin fails to particularly call for wherein the seller is a seller on an online auction system, as specified in claims 39, 65, 89, 113, 136, 158;

The Business Wire article (09889724 from Dialog file 148) teaches wherein the seller is a seller on an online auction system (using Ebay), as specified in claims 39, 65, 89, 113, 136, 158. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Conklin to include a seller using an auction process as was shown by Business Wire in order to reach a large amount of potential buyers and gives the seller the opportunity to receive a competitive price for the items for sale.

It is obvious that Conklin can include an auction process since Conklin already discloses a negotiating process (Conklin: col. 19, lines 60-64) and therefore the prices are already variable. Making it an auction could generate even higher prices for the sellers.

2. Claims 27, 40, 53, 66, 77, 90, 101, 114, 124, 137, 159 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Conklin and the Business Wire article sited, as set forth above, in view of Godwin (Travel Weekly, v44, pg 19(2), #02472750 from file 148).

Conklin fails to particularly call for storing the data record in a payment confirmation queue in response to receipt of the information from the payment location that payment has been actually made at the payment location, as specified in claims 27, 53, 77, 101, 124; and

maintaining device queue records comprising lists of messages awaiting delivery, messages currently being delivered, and messages awaiting confirmation of delivery, as specified in claims 40, 66, 90, 114, 137, 159.

Godwin teaches using queues for payments -see p. 2, pars. 3-8. ("The cruise lines keep tabs on other agent activity besides bookings, by checking the queues frequently...Besides the confirmation queue, there are the option payment and final payment queues and the cancellation queue...If the deposit has not arrived by two days before the due date, the agency's PNR appears in the cruise line's option payment queue and a message goes into the agency's queues as well. If the payment also does

not show up on the due date, the PNR will be dropped into the expired option queue...The final payment queues work in the same way, giving notice to the shipline and the agency two days before money is due and dropping the PNR into the expired final payment queue...")

It would have been obvious to one of ordinary skill that because Conklin discloses proposed orders "pending", (Conklin: col. 20, lines 57-61), accessing stored records (Conklin: Fig. 8) and using email (Conklin: Fig. 7), that it would have been obvious to use a memory labeled as a buffer or a queue for helping when there is network traffic and a source cannot send the messages at the present time, especially since Conklin uses emails (e.g., Conklin: Figs. 11, or 18-23) which have queues.

(10) Response to Argument

For the convenience of the board, the Examiner summarizes the rejection of the most representative claim in light of the prior art applied.

Re claim 16:

- providing a money transfer system connected for electronic communications with at least the seller computer, the money transfer system connected for

electronic communications with one or more payment locations associated with the money transfer system having payment location local computers;

[Conklin. Figures 1a-1j discloses participants-buyers and sellers, computers and Internet; Figs. 12, 15 C-1, 24, 30; col. 6 lines 51-67; col. 26 line 40 to col. 27 line 32 disclose money transfer-wire transfer, letter of credit; Fig. 30 discloses the order processing system including Wire transfer, with instructions to the user to take the wire transfer form to the bank in order to remit payment using a wire transfer method.]

- receiving at the money transfer system an electronic payment request from the seller computer in response to a proposed transaction between the buyer and the seller, the payment request comprising information including at least a transaction amount; [Conklin. col. 26 lines 1-56 and Fig. 16 disclose a proposed order displayed to the seller including a payment request by letter of credit asking the seller to approve the transaction, and a transaction amount (Total:\$25000.00 usd)]

- assigning by the money transfer system a unique transaction number to the payment request; [Business Wire. "I-Escrow assigns a transaction identification number" pg. 2, para. 2]
- determining by the money transfer system a preliminary total amount required from the buyer in connection with the transaction comprising at least the transaction amount; [Conklin. Fig. 1g discloses prices and proposed order catalog price]
- determining by the money transfer system a grand total amount based upon the preliminary total amount and any other applicable charges; [Conklin. Col. 25 lines 41-59 discloses taking into account discounts; col. 31, lines 40-54 discloses agreed upon payment terms including shipping and handling terms, fees for handling; Fig. 16 discloses a Total amount of the order; Fig. 30 discloses "Details of Charges".]
- communicating information from the money transfer system to the seller computer system for displaying at least the grand total amount and the unique transaction number to the buyer computer system;

[Conklin. Col. 31 lines 41-45 discloses taking into account discounts; col. 31, lines 40-54 discloses agreed upon payment terms including shipping and handling terms, fees for handling; Fig. 16 discloses a Total amount of the order; Fig. 30 discloses "Details of Charges"; col. 25 line 60 to col. 26 line 19 discloses email communication between buyer and seller for negotiation; Fig. 16 discloses "Total: \$25000.00 usd" and "Buyer Order number"; Fig. 8 (570) discloses "Sellers may view their transaction records from pending to final sales, based on criteria such as Buyer's name, unique order ID, data, etc."]

- in response to receipt at the money transfer system of information from a payment location local computer at a payment location associated with the money transfer system that payment in the amount of the grand total amount has been received at the payment location; [Conklin. Fig. 7 (530) discloses payment method chosen and col. 26 line 67 to col. 27 line 5 disclose "the present invention enables the use of internationally accepted payment methods and automates the negotiation

of them, along with the negotiation of the overall agreement. The payment vehicle most commonly used when the buyer and seller are complete strangers to each other is the letter of credit (L/C)...". Col. 27 lines 26-31, col. 6 lines 51-65, and fig. 30 disclose a wire transfer payment method including the wire transfer being conducted at a bank. Fig. 16 discloses a total amount.]

- communicating a message to the seller computer system that payment has been actually made at a payment location; [Conklin. Figures 7-8 both parties are notified via email. Figure 16 discloses a proposed letter of credit sent to seller order processing system requesting final approval.]
- and effecting completion of the transaction by making payment via the money transfer system to the seller; [Conklin. Figure 8 discloses Payment method is chosen (530), transaction is processed (532), and transaction is closed(555).]

In response to the appellant's argument that no art teaches or suggests the combination where a buyer must go to a payment

location and make a payment in order to complete an electronic transaction in an online commerce system, and that Conklin is not a money transfer system, Conklin discloses an online purchasing and negotiation system wherein the buyer can pay for purchases using a letter of credit or wire transfer. In particular, Conklin discloses a wire transfer request form instructing the user to take the form to a bank. The bank will remit the funds via wire transfer-see Fig. 30.

Appellants' pre-KSR brief argues that there is no teaching suggestion or motivation to combine Conklin and Business wire, and Godwin. *KSR* forecloses Appellants' argument that a specific teaching is required for a finding of obviousness. *KSR*, 127 S. Ct. at 1741, 82 USPQ2d at 1396.

Claims 16, 18-42, 44-68, 70-92, 94-116, 118-138 and 140-159 recite combinations which only unite old elements with no change in their respective functions and which yield predictable results. Thus, the claimed subject matter likely would have been obvious under *KSR*. In addition, neither the Appellants' Specification nor Appellants' arguments present any evidence that modifying Conklin with the selected elements of Business Wire and Godwin was uniquely challenging or difficult for one of ordinary skill in the art. Under those circumstances, the

Examiner did not err in holding that it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Conklin to include assigning by the money transfer system a unique transaction number to the payment request as taught by Business Wire and the payment confirmation queue as taught by Godwin to allow for a method of tracing payment activity of the transaction and to allow for a queue to help in managing network traffic. Because this is a case where the improvements are no more than the predictable use of prior art elements according to their established functions, no further analysis is required by the Examiner. *KSR*, 127 S. Ct. at 1740, 82 USPQ2d at 1396.

In response to the appellant's argument that Conklin does not disclose or teach communicating a message that payment has actually been made, the appellant's attention is directed to Figs. 7, 8 concerning e-mail notification of the transactions, and Fig. 16 concerning letter of credit approval of the transaction requested from the seller. Conklin further discloses "All participants in a negotiation are continually notified by e-mail as the negotiations progress." -see col. 25 line 60 to col. 26, see also Fig. 1g email & Browser access (order activity 78), Figs. 18-21.

In response to the appellant's argument concerning separate patentability of independent claims, the Examiner has applied prior art to all the limitations of the independent claims.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections
should be sustained.

Respectfully submitted,

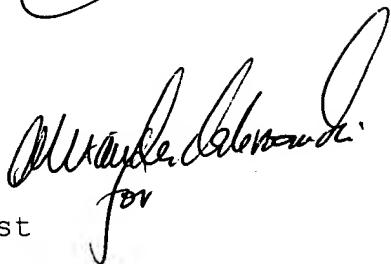


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